

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT BARNETT,

Plaintiff,

C.A. No. _____

vs.

Hon. _____

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

_____/

Gary S. Fields (P48799)
Attorney for Plaintiff
Eisenberg, Benson & Fields, PLLC
2000 Town Center
Suite 1780
Southfield, Michigan 48075
Telephone: (248) 357-3550
E-Mail: gfields@ebflegal.com

David M. Davis (P24006)
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401 South Old Woodward Avenue
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Telephone: (248) 645-0800
E-Mail: dmd@hardylewis.com

NOTICE OF REMOVAL

CERTIFICATE OF SERVICE

David M. Davis (P24006)
Attorney for Defendant
401 South Old Woodward Ave.
Suite 410
Birmingham, Michigan 48009

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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ROBERT BARNETT,

Plaintiff,

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METROPOLITAN LIFE INSURANCE
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_____/

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Eastern District of Michigan
Southern Division:

The Notice of Defendant Metropolitan Life Insurance Company ("MetLife") respectfully
shows:

1. Plaintiff Robert Barnett filed his Complaint against MetLife on March 20, 2012, in
the Circuit Court for the County of Oakland, State of Michigan, contending that Defendant breached
provisions of the Plan by denying disability benefits under an employee welfare benefit plan
maintained by Northwest / Delta Airlines ("Plan"). The action is entitled Robert Barnett, Plaintiff
v. Metropolitan Life Insurance Company, Defendant, and is identified as Case Number 2012-
125714-CK ("State Court Action"). A copy of the Complaint and further attachments and pleadings
are attached hereto.

2. MetLife received notice of the State Court Action when a copy of the Summons and Complaint were received by its registered agent, CT Corporation, on March 23, 2012. This Notice of Removal is being filed within the thirty (30) day period following service upon MetLife.

3. Plaintiff, by his Complaint, contends that he is entitled to disability benefits under the Plan and is contesting the determination that such benefits are not payable under the Plan. The Plan is an employee welfare benefit plan as defined at section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(1).

4. MetLife is responsible for claims administration and determinations under the Plan.

5. This Court has original jurisdiction of the case under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e) and (f), which provide that the district courts have original jurisdiction of civil actions brought under ERISA, without respect to the amount in controversy or the citizenship of the parties. See Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 107 S.Ct. 1549 (1987) and Metropolitan Life Insurance Company v. Arthur Taylor, 481 U.S. 58, 107 S.Ct. 1542 (1987); Aetna Health, Inc. v. Davila, 542 U.S. 200, 221 (2004).

6. Pursuant to 28 U.S.C. § 1441(b), MetLife may remove any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States, without regard to the citizenship or residence of the parties.

7. Even though Plaintiff's Complaint does not reference ERISA, his claim arises exclusively under ERISA § 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B), in that he is seeking to recover benefits under the Plan. Accordingly, this action is removable and this Court has jurisdiction of this case under 28 U.S.C. § 1331.

8. Copies of all process, pleadings, and orders served upon MetLife are attached to this Notice of Removal in accordance with 28 U.S.C. § 1446(a).

9. Concurrent with the filing of this Notice of Removal, Defendant MetLife is providing notice to all adverse parties and the clerk of the Circuit Court for the County of Oakland pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant MetLife gives notice that the above-described action pending in the Circuit Court for the County of Oakland, is being removed therefrom to this Court.

Respectfully submitted,

s/David M. Davis

David M. Davis (P24006)

Attorney for Defendant

Hardy, Lewis & Page, P.C.

401 S. Old Woodward, Suite 410

Birmingham, MI 48009-6629

Telephone: (248) 645-0800

E-Mail: dmd@hardylewis.com

Dated: April 19, 2012



**Service of Process
Transmittal**

03/23/2012

CT Log Number 520198838

TO: Kaiper Wilson
Metropolitan Life Insurance Company
1095 Avenue of the Americas
New York, NY 10036-6796

RE: **Process Served in Michigan**

FOR: Metropolitan Life Insurance Company (Domestic State: NY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Robert Barnett, Pltf. vs. Metropolitan Life Insurance Company, Dft.

DOCUMENT(S) SERVED: Letter, Summons, Proof of Service, Complaint

COURT/AGENCY: 6th Circuit Court, Oakland County, MI
Case # 2012125714CK

NATURE OF ACTION: Insurance Litigation - Policy benefits claimed for long term disability coverage

ON WHOM PROCESS WAS SERVED: The Corporation Company, Bingham Farms, MI

DATE AND HOUR OF SERVICE: By Certified Mail on 03/23/2012 postmarked on 03/20/2012

JURISDICTION SERVED : Michigan

APPEARANCE OR ANSWER DUE: Within 28 days

ATTORNEY(S) / SENDER(S): Gary S. Fields
Eisenberg, Benson & Fields, PLLC
2000 Town Center
Suite 1780
Southfield, MI 48075
248-357-3550

ACTION ITEMS: CT has retained the current log, Retain Date: 03/23/2012, Expected Purge Date: 03/28/2012
Image SOP
Email Notification, CTServiceof Process ctserviceofprocess@metlife.com

SIGNED: The Corporation Company
PER: Stephanie Hendrickson
ADDRESS: 30600 Telegraph Road
Suite 2345
Bingham Farms, MI 48025-5720
TELEPHONE: 248-646-9033

Law Offices
Eisenberg, Benson & Fields, PLLC
2000 Town Center, Suite 1780
Southfield, Michigan 48075

Gary Eisenberg
Alexander H. Benson
Gary S. Fields
Alyssa Moss

Telephone
(248) 357-3550
Facsimile
(248) 357-3404
Website
www.ebfllegal.com

March 20, 2012

Metropolitan Life Insurance Company
The Corporation Company
30600 Telegraph Road #2345
Bingham Farms, MI 48025

Re: Robert Barnett v Metropolitan Life Insurance Company
Case NO.: 2012-125714-CK

Dear Sir/Madame:

Enclosed please find the Summons and Complaint and Complaint with
regards to the above referenced matter.

Should you have any questions or concerns, please do not hesitate to contact
me.

Very truly yours,

Law office of Eisenberg, Benson & Fields, PLLC

Gary S. Fields
E-mail: gfields@ebfllegal.com

GSF/saj
Enclosures

Approved: SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 2012-125714-CK 12-JDG WENDY POTTS
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Court address

1200 North Telegraph Road, Pontiac MI

Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).

Robert Barnett

Plaintiff attorney, bar no., address, and telephone no.

Gary S. Fields (P48799)

2000 Town Center, Suite 1780

Southfield, Michigan 48075

(248) 357-3550

Defendant name(s), address(es), and telephone no(s).

Metropolitan Life Insurance Company

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued MAR 20 2012	This summons expires JUNE 19 2012	Court clerk Bill Bullard Jr.
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*This summons is invalid unless served on or before its expiration date.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.**Family Division Cases**

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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General Civil Cases

- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☒ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

VENUE

Plaintiff(s) residence (include city, township, or village)

Northville, MI

Defendant(s) residence (include city, township, or village)

Oakland County

Place where action arose or business conducted

Oakland County

3.20.2012

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

PROOF OF SERVICE**SUMMONS AND COMPLAINT**

Case No. _____

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NON-SERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required).

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____

List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature: _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____

Attachments _____

_____ on

Day, date, time

_____ on behalf of _____

Signature

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROBERT BARNETT,

Plaintiff,

v

METROPOLITAN LIFE
INSURANCE COMPANY,

Defendant.

Case No. 12-

-CK

HON.

2012-125714-CK

JDG WENDY POTTS

Gary S. Fields (P48799)
Attorney for Plaintiff
2000 Town Center, Suite 1780
Southfield, Michigan 48075
(248) 357-3550 / (248) 357-3404 - Fax

This case has been designated as an
eFiling case, visit
www.oakgov.com/clerkrod/efiling
to review a copy of the Notice of
Mandatory eFiling

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action, not between these parties arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

/s/Gary S. Fields
Gary S. Fields (P48799)

COMPLAINT

NOW COMES Plaintiff, by and through his attorneys, EISENBERG, BENSON & FIELDS, PLLC, and for his Complaint states as follows:

1. That the Plaintiff, Robert Barnett, has been, and at all times pertinent hereto, is a resident of the City of Northville, County of Oakland, State of Michigan.
2. That the Defendant, Metropolitan Life Insurance Company, is a New York

corporation authorized and licensed to do business in the State of Michigan, herein after referred to as "Met Life".

3. That the amount in controversy is in excess of Twenty-Five Thousand (\$25,000.00) Dollars exclusive of costs, interest and attorney fees.

4. That Plaintiff, whose date of birth is March 11, 1951, had been employed by Delta Airlines, formerly Northwest Airlines for approximately thirty (30) years.

4. That through his employer Delta Airlines, Plaintiff did obtain a policy of disability insurance from Defendant, Delta Air Lines, Inc. Group Term II Life Insurance Plan, Policy Number 0123317, and such policy was in full force and effect when Robert Barnett became disabled from his employment in August 2011.

5. Plaintiff became disabled pursuant to the terms of the policy of insurance which disability includes "that because of sickness or an injury either: You are expected never again to be able to do: Your job; and any other job for which You are fit by education, training or experience; OR You lose, entirely and irrecoverably, the use of both eyes, both feet, both hands, or one hand and one foot".

6. That after his disability, Plaintiff did notify Defendant of his disability and applied for disability benefits pursuant to the policy of insurance in effect.

7. That despite demand therefore, Defendant has failed to pay the disability benefits Plaintiff is entitled to pursuant to the policy of insurance.

8. That all conditions precedent to recovery and/or payment of the policy benefits have been performed and have occurred yet Defendant still has failed to pay benefits that Plaintiff is entitled to pursuant to the policy of insurance.

WHEREFORE, Plaintiff prays for judgment in an amount to be determined as fair, just and reasonable together with costs, interest and attorney fees.

Respectfully submitted,

EISENBERG, BENSON & FIELDS, PLLC

/s/ Gary S. Fields

Gary S. Fields (P48799)

Attorney for Plaintiff

2000 Town Center, Suite 1780

Southfield, Michigan 48075

(248) 357-3550 (248) 357-3404 FAX

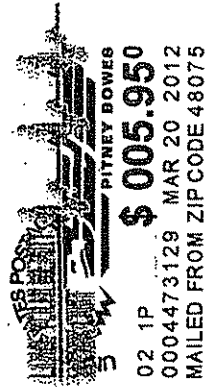
Dated: March 19, 2012

Law Office
Eisenberg, Benson & Fields, PLLC
2000 Town Center, Suite 1780
Southfield, Michigan 48075

CERTIFIED MAIL™

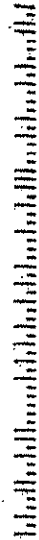


7010 3090 0002 1976 8905



Metropolitan Life Insurance Company
The Corporation Company
30600 Telegraph Road #2345
Bingham Farms, MI 48025

48025572095



CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to Gary S. Fields, Attorney for Plaintiff, Eisenberg, Benson & Fields, PLLC, 2000 Town Center, Suite 1780, Southfield, Michigan 48075. In addition I certify that I have sent the foregoing paper by first-class mail, postage pre-paid to Gary S. Fields.

Respectfully submitted,

s/David M. Davis

David M. Davis (P24006)

Attorney for Defendant

Hardy, Lewis & Page, P.C.

401 S. Woodward Ave.

Suite 410

Birmingham, Michigan 48009

Telephone: (248) 645-0800

Email: dmd@hardylewis.com

Dated: April 19, 2012

00234742.WPD

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROBERT BARNETT,

Plaintiff,

C.A. No. 2012-125714-CK

vs.

Hon. Wendy Potts

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

_____/

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NOTICE OF FILING REMOVAL
TO THE FEDERAL DISTRICT COURT

PROOF OF SERVICE

David M. Davis (P24006)
Hardy, Lewis & Page, P.C.
Attorney for Defendants
401 South Woodward Ave. Ste. 410
Birmingham, Michigan 48009

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ROBERT BARNETT,

Plaintiff,

vs.

C.A. No. 2012-125714-CK

Hon. Wendy Potts

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

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NOTICE OF FILING REMOVAL
TO THE FEDERAL DISTRICT COURT

To: Honorable Wendy Potts
Judge in the Circuit Court for the County of Oakland

PLEASE TAKE NOTICE that Defendant Metropolitan Life Insurance Company on April 19, 2012, filed its Notice of Removal, copies of which are attached hereto, in the Office of the Clerk of the United States District Court, Eastern District of Michigan, Southern Division, at Detroit, Michigan. Attached hereto are copies of the various papers filed in connection with such removal.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 4-19 20 12

By: ☒ U.S. Mail ☐ Fax
☐ Hand Delivered ☐ Overnight Courier
☐ Federal Express ☐ Other:

Signature David M. Davis

Dated: April 19, 2011

00234742.WPD



David M. Davis (P24006)
Attorney for Defendant
Hardy, Lewis & Page, P.C.
401 S. Old Woodward Ave. Ste. 410
Birmingham, Michigan 48009
Telephone: (248) 645-0800